



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ANN MAVINEE LEENHOUTS
CR-07-0319-PR**

PARTIES AND COUNSEL:

Petitioner: Ann Mavinee Leenhouts, represented by Peter A. Kelly.

Respondent: State of Arizona, represented by Joseph L. Parkhurst, Assistant Attorney General.

FACTS:

Leenhouts and her husband, David, were married with three children. Leenhouts filed for dissolution of the marriage and David was given temporary custody of the children. Leenhouts subsequently reported allegations by two of the children that David had sexually abused them. After an initial investigation, the Arizona Department of Economic Security (ADES) filed a dependency action alleging that the children were dependent as to David. Leenhouts had temporary physical custody of the children while the action was pending and ADES had legal custody. The juvenile court dismissed the dependency petition on August 2, 2004, ordered ADES to return the children to David, and denied Leenhouts unsupervised access to her children because she had “manipulate[d] at least one of the children to make the allegations of molestation against [David].” Leenhouts did not return the children to David or ADES.

After she failed to return the children, David filed a complaint with the Tucson police on August 18. On September 24, the U.S. Marshals found Leenhouts with the children in Maryland and arrested her. Leenhouts was charged with custodial interference under A.R.S. §13-1302. The first indictment was filed October 6, 2004 and accused Leenhouts of custodial interference pursuant to A.R.S. §13-1302 (A)(3). She was arraigned on that charge on December 4, 2004. A supervening indictment was issued on October 11, 2005 accusing Leenhouts of custodial interference pursuant to A.R.S. §13-1302 (A)(1) and/or (3). Neither Leenhouts nor her counsel was served with or made aware of the supervening indictment until May 23, 2006, the first day of trial. Leenhouts objected to proceeding with the trial because she had no notice of the new charge and because it deprived her of a complete defense: the State could not prove the “joint custody” element of subsection (3). The trial court found no prejudice as a result of any error, accepted her plea of not guilty to the charges in the supervening indictment, and proceeded to trial. The jury found her guilty of custodial interference. The trial court suspended imposition of sentence and placed her on three years’ supervised probation. Leenhouts appealed.

The court of appeals found that Leenhouts had not shown that she suffered actual prejudice from the State’s failure to timely arraign her on the supervening indictment. Other than the element of joint custody in subsection (3), the elements of subsections (1) and (3) are identical. There is nothing in the record to indicate that Leenhouts had relied on the initial indictment to her detriment because she had listed fifty potential witnesses and had a lengthy list

of exhibits. Further, she sought leave to present evidence of a necessity defense. Thus, she did not intend to rely solely on the State's inability to prove the joint custody element of the original charge. Finally, she did not request a continuance which would have cured any potential prejudice of surprise. The court of appeals refused to address Leenhouts' Sixth Amendment claim because it was not raised until oral argument, citing *State v. Box*, 205 Ariz. 492, 495, n.2, 73 P.3d 623, 626, n.2 (App. 2003). The court of appeals also refused to consider Leenhouts additional items of prejudice (that she would have had an opportunity to develop a different trial strategy and that she would have accepted the State's plea offer) because these arguments were raised for the first time in her reply brief, citing *State v. Shipman*, 208 Ariz. 474, 476, n.2, 94 P.3d 1169, 1171, n.2 (App. 2004).

ISSUE:

Whether the court erred in requiring the trial to proceed on the same day defendant was arraigned on a superseding indictment which modified an essential element of the original charge.

DEFINITIONS:

A.R.S. §13-1302 provides, in relevant part:

- A. A person commits custodial interference if, knowing or having reason to know that the person has no legal right to do so, the person does one of the following:
1. Takes, entices or keeps from lawful custody any child, or any person who is incompetent, and who is entrusted by authority of law to the custody of another person or institution.
 2. Before the entry of a court order determining custodial rights, takes, entices or withholds any child from the other parent denying that parent access to any child.
 3. If the person is one of two persons who have joint legal custody of a child takes, entices or withholds from physical custody the child from the other custodian.

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